

EXHIBIT B
B5 BIODIESEL AGREEMENT BETWEEN
THE CITY OF NASHUA, NH
AND

THIS AGREEMENT is made and entered into effective as of _____, 2018 by and between the CITY of Nashua, located at 229 Main Street, Nashua, NH 03060 (the "CITY") and _____, located at _____ (the "CONTRACTOR").

WITNESSETH

WHEREAS, the CITY is desirous of obtaining B5 Biodiesel fuel blend for the Nashua Transit System. NOW, THEREFORE, in consideration of the foregoing recitals and covenants and agreements of each of the parties herein set forth, the parties do agree as follows:

1. CONTRACTOR SERVICES

The CITY does hereby engage and retain the CONTRACTOR to deliver BS-Bio-diesel fuel blend on a year-round basis. It is required that the B5 Biodiesel product being supplied is formulated utilizing "premium ultra-low sulfur #2" blend stock on a year-round basis.

CONTRACTOR will follow the guidelines listed below for the minimum protection cloud points required. All fuel as delivered shall meet or exceed the cloud point requirements as stated below unless superseded by requirements stated at time of order:

ADDITIVE WINTER PREMIUM DIESEL CLOUD POINT REQUIREMENTS

October 1st to December 14th - "B5 fuel delivered" with a required cloud point that meets or exceeds + 8° cloud point

December 15th to March 14th - "B5 fuel delivered" with a required cloud point that meets or exceeds -5° cloud point

March 15th to September 30th - "B5 fuel delivered" with a required cloud point that meets or exceeds + 20° cloud point

2. COMMENCEMENT AND TERM

Deliveries shall commence upon the full execution of this Agreement and shall proceed diligently and in good faith from July 1, 2018 through June 30, 2019 - with an option to extend for up to one (1) year.

- The CONTRACTOR will deliver quantities requested to 11 Riverside Street within a 24- hour time period. Friday requests will be delivered on Monday.

- The CONTRACTOR's drivers will take precautions to prevent spillage during deliveries. Driver will immediately notify CITY of Nashua personnel of problems resulting from defective equipment at the 11 Riverside Street, Nashua NH facility. **The City of Nashua will not be responsible for spillage during deliveries.**
- Quantity stated is an estimate based on history and anticipated needs. The CITY shall not be bound to this specific quantity to fulfill the agreement.
- Deliveries must be made between 6:00am - 9:00pm EST.
- The bio-diesel component must meet ASTM-D-6751 code and the final blend must meet the requirements of the D975 code.
- The bio-diesel product must include a cold weather additive.
- An authorized CITY of Nashua employee must sign all delivery slips.
- All invoices must be forwarded to CITY of Nashua, c/o Accounts Payable, City Hall, 229 Main Street, PO Box 2019, Nashua NH 03061-2019. Invoices must identify the delivery point, date and quantity, and must include proof of delivery slip.
- Delivery price will be \$ _____ per gallon for the duration of this agreement.
- The CONTRACTOR's Certificate of Liability Insurance must be on file at the CITY's Purchasing Office and Risk Management Department. New certificates must be forwarded as coverage is renewed.
- No confirming purchase order will be mailed to the CONTRACTOR from the CITY.
- Nashua Transit, acting for the CITY, will issue draw-down orders to cover processing of invoices. However, no purchase order needs to be referenced on invoices. Location of delivery point is the critical data to identify the CITY of Nashua cost center.
- All requests for delivery will come from an authorized CITY employee.
- The CITY is utilizing funding from the Federal Transit Administration for this project. The federally required FTA clauses for this contract can be found in the attached document **Exhibit A- FTA Clauses which are incorporated herein by reference.**

3. INSURANCE REQUIREMENTS

CONTRACTOR shall carry and maintain in effect during the performance of services under this contract:

- General Liability **(which must include hazardous material/waste coverage):**
\$1,000,000 per Occurrence
\$2,000,000 Aggregate
(City of Nashua Additional Insured)
- Motor Vehicle Liability:
\$1,000,000 Combined Single Limit ***coverage must include all owned, non-owned and hired vehicles.**
(City of Nashua Additional Insured)
- Workers' Compensation Coverage according to Statute of the State of New Hampshire:
\$100,000 / \$500,000 / \$ 100,000
(Sole Proprietors not subject to Workers' Compensation requirements)

CONTRACTOR and subcontractors at every tier will fully comply with NH RSA Chapter 281-A, "Workers' Compensation".

CONTRACTOR shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by CONTRACTOR are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by CONTRACTOR under the contract. The CITY shall not maintain any insurance on behalf of CONTRACTOR. Subcontractors are subject to the same insurance requirements as the CONTRACTOR and it shall be the CONTRACTOR's responsibility to ensure compliance of this requirement.

The parties agree that CONTRACTOR shall have the status of and shall perform all work under this agreement as an independent contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this agreement is between the CITY and CONTRACTOR, and nothing in this agreement shall create any contractual relationship between the CITY and CONTRACTOR's consultants, sub consultants, contractors. The parties also agree that CONTRACTOR is not a CITY employee and that there shall be no:

1. Withholding of income taxes by the CITY;
2. Industrial insurance coverage provided by the CITY;
3. Participation in group insurance plans which may be available to employees of the CITY;
4. Participation or contributions by either the CONTRACTOR or the CITY to the public employees retirement system;
5. Accumulation of vacation leave or sick leave provided by the CITY;
6. Unemployment compensation coverage provided by the CITY.

CONTRACTOR will provide the CITY with certificates of insurance for coverage, as listed, and endorsements affecting coverage required by the Agreement. The CITY requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability, Employers' Liability and Auto Liability policies must name the City of Nashua as an additional insured and reflect on the certificate of insurance.** CONTRACTOR is responsible for filing updated certificates of insurance with the **City of Nashua's Risk Management Department** during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, CONTRACTOR must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve CONTRACTOR of its responsibilities or limit the amount of its liability to the CITY or other persons, and CONTRACTOR is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by CITY shall be called upon to contribute to a loss.
- CONTRACTOR is responsible for and required to remedy all damage or loss to any property, including property of the CITY, caused in whole or part by CONTRACTOR or anyone employed, directed, or supervised by CONTRACTOR.

Regardless of any coverage provided by any insurance, CONTRACTOR agrees to indemnify and shall defend and hold harmless the CITY, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of any negligent act, omission, or fault or willful misconduct, whether active or passive, of CONTRACTOR or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. CONTRACTOR's indemnity, defense and hold harmless obligations, or portions thereof, shall not apply to liability caused by the negligence or willful misconduct of the party indemnified or held harmless

4. GOVERNING LAW AND VENUE

This Agreement shall be interpreted and enforced in accordance with the laws of the state of New Hampshire, excluding any choice of law or conflicts of law rules that would result in the application of the laws of a different jurisdiction, and any litigation related to this Agreement shall be brought in a state court located in the State of New Hampshire.

5. SEVERABILITY

If any provision of this Agreement is determined to be void, unlawful, or otherwise unenforceable, that provision shall be severed from the remainder of this Agreement, and replaced automatically by a provision containing terms as nearly like the void, unlawful, or unenforceable provision as possible, or otherwise modified in such fashion as to preserve, to the maximum extent possible, the original intent of the Parties, and this Agreement, as so modified, shall continue to be in full force and effect.

6. AMENDMENT

No modification, amendment, or other change to this Agreement shall be effective unless agreed to in a writing signed by each of the Parties.

Any proposed modification to the Scope of Work, including schedule, shall be submitted in writing to the CITY with an explanation for the need to amend the Agreement and proposed adjustment.

7. NO WAIVER

Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies in that or any other instance. No Party shall be deemed to have waived any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

8. TERMINATION

This Agreement can be terminated, in its sole discretion, by the CITY at any time, and CONTRACTOR will be paid for all work performed up to the termination date. The CITY shall have the benefit of all work performed to the date of termination, and is entitled to all work, reports, drafts, notes, recommendations, etc. performed or prepared by CONTRACTOR up to the termination date. For termination by default please refer to the FTA clauses located within Exhibit A.

9. ENTIRE AGREEMENT

This Agreement and any amendments to this Agreement contain the complete agreement between the Parties with respect to the subject matter of this Agreement and supersede all other agreements and understandings, whether written or oral, with respect to the matters contained in this Agreement, including any letters of intent, term sheets or similar proposals exchanged by the Parties.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the

CITY OF NASHUA

By: James W. Donchess, Duly Authorized

Signature: _____

Title: Mayor

Date: _____

CONTRACTOR

By: _____, Duly Authorized

Signature: _____

Title: _____

Date: _____